Investigation of Marine Casualties and Incidents. Marine casualties involving foreign vessels outside our territorial waters often have a significant effect on the United States. Such casualties may threaten the safety of life and property within the U.S. and its waters, and pollution resulting from such casualties may threaten or damage habitats and property within the United States. In such cases, U.S. resources may be expended to save lives and property or to protect the environment. Also, as a port state, the U.S. has an interest in the safe operation of foreign vessels entering and leaving its ports, even if a particular casualty does not occur within the port.

Participation in investigations of these types of marine casualties involving foreign vessels beyond U.S. territorial waters would assist in gathering complete, accurate information on the contributing causes of casualties so that remedial measures can be taken, and would assist in determining whether federal laws or regulations have been violated. Information derived from these investigations would also be used to monitor existing policies and the adequacy of existing regulations and treaties.

SECTION 317. COMMERCIAL FISHING VESSEL MANDATORY EXAMINATION REQUIREMENTS.

This proposal would authorize the Secretary of Transportation to prescribe regulations to ensure compliance with fishing vessel safety standards through mandatory periodic safety examinations.

The Secretary is currently authorized to prescribe regulations which require uninspected fishing vessels, fish processing vessels, and fish tender vessels to be equipped with safety devices and to meet safety standards (46 U.S.C. 4502). That statute requires the Secretary to examine vessels for compliance with these safety standards at least once every two years. However, the mandatory examination authority does not apply to fishing vessels, only to fish processing vessels and fish tender vessels engaged in the Aleutian trade.

In 1991, to address this gap in examination authority, and to encourage compliance with safety standards, the Coast Guard implemented a voluntary fishing vessel examination program which is limited to examination of fishing vessels to determine the degree of compliance with the safety equipment, training, and stability standards found in 46 CFR Part 28, Requirements for Commercial Fishing Industry Vessels. Deficiencies in the material condition of hulls, machinery, and operations that are not in keeping with "good marine practice' or regulated by Part 28, are pointed out as an educational/safety recommendation during the examination with no threat of a citation for the deficiency. The agency hoped to reduce fishing vessel casualties with the voluntary program through education and outreach. However, only 6 – 7 % of the estimated 120,000 fishing vessels have chosen to take part in the voluntary programs. As a result, commercial fishing remains one of the most hazardous industries in the nation.

Data show that the number of deaths and fishing vessel casualties decreased by 33% after full implementation of the statutory requirements for safety devices and standards, and

implementation of the Coast Guard's voluntary dockside examination program. From 1984 – 1988 there were 519 deaths and 1,117 fishing vessel losses, while from 1994 – 1998, after implementation, the number of deaths fell to 349 and the number of fishing vessel losses to 707.

The decrease in deaths, however, has reached a plateau. There was a low of 54 operational deaths in the fishing industry in 1997, followed by 78 deaths in 1998, and 85 deaths in 1999. Data for 2000 indicate that deaths have fallen to 60, however, that number is still unacceptably high in comparison to other segments of the marine industry. This data illustrates that something more must be done to move from the current plateau toward lower crewmember fatalities in the fishing industry.

Implementation of a mandatory periodic examination program will permit the Coast Guard to focus its limited resources on ensuring all commercial fishing vessels comply with the existing rules more efficiently, significantly reducing the time examiners spend persuading fishermen to participate in the examination program. By conducting an examination of a fishing vessel, similar in scope to the voluntary dockside safety exam in which the safety equipment and basic seaworthiness of the vessel are examined, discrepancies can be identified and corrected at the dock where safety checks are safer to perform, delays and interference with fishing operations at sea will be reduced as desired by the industry, and the playing field will be leveled among fishermen who have volunteered to comply with the regulations and the approximately 93% of the industry who have not participated in the voluntary dockside program. Ultimately, mandatory periodic examinations will significantly contribute to reducing the fatality rate to levels experienced in other segments of the marine industry.

SECTION 318. MARINE INDUSTRY AND OTHER EXCHANGE PROGRAMS.

This proposal would authorize the Coast Guard to implement fully a Marine Industry Exchange Program and, if appropriate later, to establish other employee exchange programs. The Marine Industry Exchange and similar programs would allow government and private sector participants to gain a better understanding of each organization, leading to stronger partnerships and an improved regulatory environment.

The Coast Guard currently conducts a Maritime Industry Training Program, under which Coast Guard officers are assigned in a training status to a nongovernmental organization. This program has been of great benefit to the Coast Guard and the individual participants, because of the unique opportunities it offers for Coast Guard members to gain a better understanding of the industry it regulates. The Coast Guard proposes to expand this program to include the assignment of nongovernmental maritime industry personnel to the Coast Guard. However, statutory restrictions on acceptance of voluntary services make a legislative change necessary, prior to converting the program into a true, two-way exchange program.

Generally, under section 1342 of title 31, U.S. Code, the Government may not accept voluntary services except as authorized by law. The Coast Guard has obtained such statutory authorizations for the acceptance of voluntary services in other circumstances. For example, section 93(m) of title 14 authorizes the Coast Guard to accept and utilize voluntary services in order to save life or protect property. Also, section 93(t) permits the Commandant to accept voluntary services for the maintenance and improvement of natural and historic resources on Coast Guard property. This legislative proposal would add a new subsection to 14 U.S.C. § 93, creating specific authority for the Coast Guard to establish an Industry Exchange Program (and other similar programs in the future), and to accept voluntary services in conjunction with the programs. It would provide that private industry participants assigned to the Coast Guard are not Federal employees (except relating to compensation for work-related injuries; tort claims; and government conflicts of interest and ethics provisions). However, to prevent conflicts of interest, a provision is proposed to limit exchange program participants from taking part in Coast Guard decisions that are likely to affect the commercial interest of the participant's employer or a competitor of the participant's employer.

The expanded marine industry exchange program would allow an employee of the participating commercial organization to be assigned to the Coast Guard in order to "shadow" a Coast Guard employee, to gain a better understanding of the Coast Guard's decision-making processes and day-to-day operations. A corresponding Coast Guard officer would be assigned to the private sector participant's employing organization. The maritime industry and the Coast Guard would mutually benefit from this program. The Coast Guard would benefit by providing its personnel an opportunity to obtain an "industry perspective" and by rotating private industry personnel through our organization. This will not only strengthen Coast Guard-industry partnerships, but will also enhance the Coast Guard's civilian employee recruitment opportunities. The maritime industry would benefit by gaining a better understanding of the Coast Guard, which regulates its operations. The Marine Industry Exchange and similar programs could significantly improve the environment under which the Coast Guard regulates the maritime industry.

SECTION 319. MARITIME DRUG LAW ENFORCEMENT ACT AMENDMENTS.

Applicability of the MDLEA to the Contiguous Zone

In September 1999, the President, by Proclamation, extended the outer limit of the U.S. contiguous zone to 24 nautical miles from the baseline. International law permits the enforcement of certain U.S. laws, including the Maritime Drug Law Enforcement Act (MDLEA), against certain non-U.S. vessels in the contiguous zone of the United States. However, the current terms of the MDLEA do not yet reflect the expanded jurisdiction permitted by international law and the Presidential Proclamation.

The proposed statutory change will align the jurisdictional authority over certain non-U.S. flag vessels, granted to federal law enforcement agencies under the MDLEA, with the jurisdictional authority permitted under international law in the expanded U.S. contiguous zone declared by the President in September 1999.

Clarification of the Definition of "intended for use" under the MDLEA

A recent and highly prevalent trend in the maritime smuggling of drugs is the use of specially modified, high powered, long range "go-fast" vessels combined with specially modified (typically fishing vessels no longer in use), long-range "logistic support vessels" (LSVs). The LSVs typically carry excess fuel, equipment, spare parts and spare boat crews and station themselves hundreds of miles offshore to act as floating pit-stops for the go-fasts. The go-fasts typically carry spare high powered engines, hundreds of gallons of extra fuel in portable tanks or drums, and therefore have the capability to travel hundreds of miles without refueling. In combination with the services of the LSVs, these go-fast smuggling boats have the capability of travelling thousands of miles from source countries in South America to Central and North American destinations. Some interdicted go-fasts have been carrying more than two tons of cocaine.

The MDLEA currently authorizes the seizure and forfeiture of any property used "or intended for use" to commit or facilitate the commission of any offense under the MDLEA. The statute therefore already provides the authority necessary to seize go-fast smuggling vessels as well as the LSVs that facilitate their smuggling trips.

However, the proposed change to the MEDLA would focus and clarify the circumstances under which the government seeks to exercise this existing authority. For example, the Coast Guard regularly interdicts go-fast vessels that, from the variety of facts and circumstances present, though there is no cargo onboard, reasonably appear to have recently off-loaded or jettisoned illicit cargo. The Coast Guard also regularly interdicts suspicious vessels that reasonably appear from the facts and circumstances present to be acting as LSVs for go-fast smuggling vessels. The proposed change to the statue details examples of the variety of factors that, under the correct circumstances, give rise to the reasonable conclusion that a particular vessel is a smuggling or LSV vessel.

These factors are specifically tailored to differentiate between the legitimate acts of the boating community and the deceptive tactics used by smugglers. By detailing these factors in the statute, ambiguity is eliminated and a more objective standard is created than presently exists for seizure. Rather than relying solely on the subjective determinations of law enforcement officers, these factors permit the boating public to understand and recognize the deceptive tactics employed by smugglers, and thereby avoid unwittingly engaging in them.

Further protection is added for the innocent mariner by the "totality of the circumstances" language in the proposal. This language requires that law enforcement officials take all of the circumstances into account, rather than just mechanically applying a particular factor when making decisions related to this existing seizure and forfeiture authority.

This proposal is consistent with the existing statutory scheme for the identification and interdiction of smuggling activities on the high seas. Section 3120 of The Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) provides a similar list of factors for determining intent to use an aircraft to transfer merchandise in violation of U.S. customs law.

SECTION 320. EXTENSION OF TERRITORIAL SEA FOR VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE ACT.

This section extends the area where radiotelephones are required under the "Vessel Bridge-to-Bridge Radiotelephone Act," (the Act) (P.L. 92-63, 33 U.S.C. 1203(b)). It strikes the reference to 33 U.S.C. 151, high seas and inland water demarcation lines, in section 3(b), and then inserts language stating that the "navigable waters of the United States" extend to 12 nautical miles from the baseline, by including the definition of "territorial sea" as set forth in Presidential Proclamation 5928 of December 27, 1988.

The effect of this amendment would be to broaden the scope of the Act for vessels required to carry bridge-to-bridge radiotelephones on waters from 3 to 12 nautical miles from the baseline of the United States. This amendment would authorize the Coast Guard to require vessels of one hundred gross tons or more that carry any passengers for hire, towing vessels of twenty-six feet or over in length, dredges or floating plants, and power-driven vessels of twenty meters or over in length, including foreign-flag vessels, to be capable of monitoring inter-ship safety and marine information broadcasts over VHF radiotelephone from 3 to 12 nautical miles from the baseline of the United States. Under current law these vessels have this requirement only out to 3 nautical miles from the baseline of the United States.

This proposal would operate to fill a gap in distress telecommunications requirements between the time of elimination of requirements under the Safety of Life at Sea (SOLAS) Convention, February 1, 2005, and the subsequent implementation of the VHF National Distress System. As a result of the implementation of the Global Maritime Distress and Safety System, the parties to the SOLAS Convention are discontinuing the SOLAS Convention requirement that ships maintain a watch on Channel 16, the distress, safety, and calling frequency until the Coast Guard can implement a digital calling system as part of the VHF National Distress System. Therefore, no requirement will exist for ships to monitor urgent marine safety information over VHF radiotelephone outside the 3-mile limit once the SOLAS requirement expires.

There are no environmental or Federal budgetary impacts as a result of this section. Foreign flag vessels operating between 3 and 12 miles of the United States coastline that never enter within 3 miles would have to carry a radiotelephone. The cost would be approximately $500 for each radio. U.S. vessels already must carry this equipment, so the extended requirement would not add any cost for U.S. vessels.

SECTION 321. PENALTIES FOR NEGLIGENT OPERATIONS AND INTERFERING WITH SAFE OPERATION.

This proposal would increase the maximum civil penalty for negligent operation of a vessel, or for interfering with the safe operation of a vessel, from $1,000 to $25,000. This would give the Coast Guard substantially more latitude to impose civil penalties in an amount appropriate to the severity of a violation. More effective enforcement options would, in turn, increase the safety of persons, property, and the environment.

Under current practice, when a merchant mariner negligently operates a vessel, the Coast Guard often uses its authority under 46 U.S.C. § 7703(1)(B) to initiate suspension and revocation proceedings, rather than proceed under 46 U.S.C. § 2302. In many instances, the outcome from these administrative law hearings is a relatively light penalty, such as a short probation period or suspension of the merchant mariner's credentials. Nonetheless, this has become the customary enforcement mechanism employed, because the maximum civil penalty allowed by 46 U.S.C. § 2302(a) for such a violation is only $1,000, an insufficient sanction in many cases.

The negligent operation of a vessel can have very serious consequences. This is especially true when the person committing the offense is a vessel master or operator, licensed by the Coast Guard. Licensed masters and operators are entrusted with the safe carriage of passengers or cargo. Operating in a negligent manner places innocent people and the environment at great risk. The gravity of this offense would be more appropriately reflected by providing the possibility for a significant monetary sanction.

Section 302 of the Coast Guard Authorization Act of 1998 expanded 46 U.S.C. § 2302 to cover interfering with the safe operation of a vessel. The Coast Guard has not yet utilized this provision to impose civil penalties. It is expected that this new provision will primarily involve the actions of passengers, in which case it is unlikely that the maximum penalty would be sought. However, since parties other than passengers might in some cases interfere with the safe operation of a vessel, the Coast Guard believes that the increase in the maximum penalty of $25,000 is appropriate for these violations as well.

By expanding the Coast Guard's enforcement options, this proposal, if enacted, would improve safety and the environment on our nation's waterways. If mariners are aware that they may be required to pay a significant civil penalty of up to $25,000, they would be more likely to take seriously the importance of safe vessel operation.

SECTION 322. INCREASE CIVIL PENALTIES FOR VIOLATIONS OF CERTAIN BRIDGE STATUTES.

Congress' intent in enacting the bridge statutes was to retain exclusive jurisdiction over all bridges over all navigable waters of the United States, to maintain freedom of navigation and to prevent impairment of navigable waters. Courts have consistently held that all bridges constructed across the navigable waters of the United States are

considered obstructions to navigation and are tolerated only as long as they serve the needs of land transportation while providing for the reasonable needs of navigation. St. Louis-San Francisco Ry. Co. v. Motor Vessel D. Mark, 243 F. Supp. 689, 692 (S.D. Ala. 1965).

The purpose of the civil penalties under title 33, United States Code is to facilitate the safe passage of vessels through bridges by deterring any inconvenience or impediment to navigation that may result from the location, construction, modification, maintenance, or operation of bridges across navigable waters of the United States. Since 1982, the Coast Guard has utilized the civil penalty program in its efforts to improve the level of service to waterway users. There are 20 potential bridge statute violations that range in amounts from $220 - $1,100 per day, involving matters such as failure to install and keep bridge lights and other signals in working order; unreasonable delay in operating a draw opening after signal; and failure to give timely notice of construction or modification events affecting navigation. Vessel owners and operators are also subject to penalties, --for example, for signaling a drawbridge to open for a nonstructural vessel appurtenance unessential to navigation or easily lowered.

Current civil penalties for violations of bridge laws and regulations are insufficient to effectively discourage violations. Repeat and blatant violations imply that some bridge owners consider the existing penalties to be no more than a cost of doing business. For example:

a. In the First Coast Guard District Area of Operations (AO) the most frequent violator is at a drawbridge across Newark Bay, a heavily navigated commercial waterway, near Newark, New Jersey. Delays encountered at this drawbridge by mariners date back to the 1950's. Civil penalty actions have been processed against and fines have been collected since the inception of the civil penalty program. Between March 1994 and July 1996, inclusive, there have been 56 violations at this bridge alone. Despite Coast Guard actions, the railroad continues to violate the law at this drawbridge.

b. In the Eighth Coast Guard District, New Orleans AO, a railroad was charged on January 30, 1997, with 98 drawbridge operation violations at their railroad bridges near Mobile, Alabama. On February 5, 1997, they were charged with an additional 10 drawbridge operation violations at the same bridges. Despite Coast Guard actions and a $200,000 fine levied, the railroad continues to violate the law at each of these drawbridges.

c. In the Eighth Coast Guard District, St. Louis AO, there were 427 drawbridge operation violations between 1989 and 2000, an average of approximately 36 violations per year. Recent numbers of violations have exceeded the average, with46 in 1999 and 50 in 2000. In particular, a drawbridge on the upper Mississippi River at Burlington, Iowa, had 19 violations in 1999 and 18 violations in 2000. Despite Coast Guard actions, the railroad continues to violate the law at this drawbridge.

Section 108 of the Coast Guard Authorization Act of 1982, P. L. 97-322, (October 15, 1982), authorized the imposition of civil penalties for bridge statute violations by amending the bridge laws. Before that Act, bridge laws only provided for criminal penalties (which authority still remains). The civil penalty provided by the CGA Act was a maximum $1,000 per-day per-violation with each day a violation continued constituting a separate offense. Since that time, the civil penalty maximums have not been revised, except for minor adjustments under the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. This adjustment increased the maximum civil penalty to $1,100 per-day per-violation, as published in 33 CFR 27.3.

Although compliance is sought first and foremost—civil penalties being the last resort—this proposal would enhance the Coast Guard's ability to discourage violations of the Rivers and Harbors Appropriations Act of August 18, 1894; the Rivers and Harbors Appropriations Act of March 3, 1899; the Bridge Act of 1906; and the General Bridge Act of 1946.

This proposal seeks to significantly increase the maximum allowable civil penalty amounts—from $1,100 per day per violation to $25,000 per day per violation. For each avoidable incident, $25,000 is the financial penalty needed to get bridge owners to comply with the laws already in place. These larger potential penalty amounts should cause repeat perpetrators to make a real effort to solve the problems causing the delays rather than routinely accept the small civil penalty assessed as the cost of doing business.

SECTION 323. CIVIL PENALTIES FOR FAILURE TO COMPLY WITH RECREATONAL VESSEL AND ASSOCIATED EQUIPMENT SAFETY STANDARDS.

Under 46 U.S.C. § 4311, a person manufacturing or selling a recreational boat that contains a defect that creates a substantial risk of personal injury to the public, or that fails to comply with an applicable Federal recreational boat safety regulation, is liable to the United States Government for a civil penalty of not more than $2,000, except that the maximum civil penalty may not be more than $100,000 for a related series of violations. A manufacturer violating any other provision of 46 U.S.C. Chapter 43 (or its implementing regulations) is liable for a civil penalty of not more than $1,000.

These monetary penalties are too small to have a substantial deterrent effect and are insufficient to ensure (1) compliance with Federal recreational boat safety regulations, (2) the exercise of reasonable diligence by manufacturers in notifying owners and repairing defective boats (and associated equipment), or (3) innovative efforts by companies seeking to improve quality control and do a better job of building safe boats. Manufacturers can often recoup the existing penalty amounts by selling a single boat or engine.

This proposal would amend 46 U.S.C. § 4311(b) to include all of the requirements of section 4307(a) in the civil penalty provision (not only wrongful manufacturing, but also

wrongful labeling and failure to notify of a recall); to increase the maximum civil administrative penalty from $2,000 to a maximum of $5,000; and to increase the maximum for a related series of violations from $100,000 to $250,000. The proposal would also add a criminal penalty provision for knowing and willful violations of section 4307(a). Lastly, it would amend section 4311(c) to increase the maximum civil administrative penalty for violating any other provision of chapter 43 or its implementing regulations, from $1,000 to $5,000.

By increasing civil penalties and providing a new criminal penalty relating to the manufacture, labeling, and notification of defects relative to recreational boats and associated equipment, the Government will be armed with the necessary enforcement tools to obtain compliance with Federal recreational boat safety regulations. The penalties are the maximums that could be applied, so that the facts and circumstances of each individual case can be taken into consideration.

SECTION 324. EXTENSION OF TIME FOR RECREATIONAL VESSEL AND ASSOCIATED EQUIPMENT RECALLS.

Effective August 10, 1971, the Federal Boat Safety Act of 1971 (FBSA) (P.L. 92-75) gave the Coast Guard the statutory authority to establish minimum safety standards applicable to manufacturers of recreational vessels and associated equipment. Associated equipment for this purpose is defined as an inboard engine, outboard motor, sterndrive unit, or inflatable personal flotation device approved under 46 CFR 160.076 (33 CFR 179.03).

Current law requires manufacturers to notify owners and repair or replace boats and designated associated equipment that (1) failed to comply with an applicable Federal recreational boat safety regulation, or (2) contain defects that create a substantial risk of personal injury to the public. The duty to notify owners regarding safety defects and failures to comply with Federal recreational boat safety regulations extends for a period five years from the date of certification (for products subject to a safety standard) or five years from date of manufacture (for products not subject to a standard). Recall notifications must (1) inform the owner of the specific defect or failure to comply, (2) include an evaluation of the hazard reasonably related to the defect or failure, (3) state the measures necessary to correct the defect or failure, and (4) inform the owner of the manufacturer's responsibility to take those measures only at the manufacturer's cost and expense.

However, some defects that create a substantial risk of personal injury to the public, such as aluminum fuel tank failures, and some failures to comply with Federal recreational boat safety regulations, such as degradation of foam flotation material, do not materialize until after five years from the date of certification or manufacture. With today's recreational boat-building technology, most boats are constructed of very durable materials with the potential for a long service life. As a result, the typical purchaser believes that any safety feature such as flotation material or any permanent appurtenance provided with the boat, such as a fuel tank, will provide as long a service life as the hull

itself. Unfortunately, Coast Guard defect investigations have found that this is not necessarily the case. For example, recent tests have questioned the reliability of foam flotation materials installed in boats older than five years for the purposes of compliance with the Flotation Standard. Yet, it is reasonable to assume that the general public believes that a boat's flotation is reliable for the useful life of the boat.

This proposal would amend 46 U.S.C. § 4310(c)(2)(A) and (B) to extend to ten years the current five-year limit on the obligation of manufacturers of recreational vessels or associated equipment to notify owners of recalls due to safety defects or noncompliance with Federal recreational boat safety regulations. Congress established the current five-year requirement in 1976. Yet, it is estimated that presently approximately 75% of the recreational vessels on the nation's waterways are over five years old. By extending the five-year limitation to ten years, this proposal would recognize the longer useful life of today's recreational vessels and assure that the responsibility to notify owners of the manufacturer's duty to remedy safety-related problems in those vessels and associated equipment without charge is more closely aligned with both the useful life of those vessels and the reasonable expectations of the boating public.

Comparisons to similar statutes support the proposed change. The Consumer Product Safety Act (P.L. 92-573), which does apply to boats and associated equipment, places no time limit on either recall campaigns or the manufacturer's duty to repair, replace, or refund the purchase price for substantial product hazards. The Motor Vehicle Safety Act (places an eight-year limit upon the manufacturer's obligation to repair or remedy motor vehicle defects and three years for tires (49 U.S. Code §30120(g)). The National Highway Transportation Safety Administration is currently seeking a legislative change to: (1) extend to ten years the current eight-year limit on the obligation of manufacturers of motor vehicles or items of motor vehicle equipment to remedy, without charge, safety-related defects and noncompliances with federal motor vehicle safety standards; and (2) increase the current three-year limit on the obligation of tire manufacturers to provide such a remedy to five years.

SECTION 325. OIL SPILL LIABILITY TRUST FUND; EMERGENCY FUND ADVANCEMENT AUTHORITY.

This proposal would authorize the advancement to the Coast Guard up to $100 million per incident for emergency oil spill response costs. Under current law, the Oil Spill Liability Trust Fund (OSLTF)—the "parent fund"—pays claims, salaries, operating expenses, and scheduled expenditures associated with the Oil Pollution Act of 1990. In addition, a permanent annual appropriation of $50 million is made available from the OSLTF to carry out emergency oil spill response needs. This fund is called the OSLTF Emergency Fund. Expenditures from the Emergency Fund are then collected from responsible parties and reimbursed to the parent funds.

Annual Emergency Fund expenditures during the last 4 years have been approximately $42-$50 million, without a major oil spill. Although an emergency supplemental appropriations request could be submitted to replenish the Emergency Fund in the event

amounts in the Emergency Fund are insufficient, a spill similar to the Exxon Valdez could deplete the Emergency Fund in two to three weeks. If Congress were not in session when the Emergency Fund ran out, there would be no way to secure the additional funding needed to continue response work.

This provision would authorize advancement to the Coast Guard up to an additional $100 million, per incident, from the OSLTF parent fund. Amounts advanced from the parent fund under these circumstances would be repaid to the OSLTF when the amounts are recovered by the United States from the responsible party. The provision would require the Coast Guard to notify Congress of the amount advanced and the circumstances necessitating the advancement within 30 days after making the advancement.

SECTION 326. OIL SPILL LIABILITY TRUST FUND; EMERGENCY FUND.

Under current law, the Oil Spill Liability Trust Fund (OSLTF)-the "parent fund"-pays claims, salaries, operating expenses, and scheduled expenditures associated with the Oil Pollution Act of 1990. In addition, a permanent annual appropriation of $50 million is made available from the OSLTF to carry out emergency oil spill response needs. This fund is called the OSLTF Emergency Fund. Expenditures from the Emergency Fund are then collected from responsible parties and reimbursed to the parent funds. This proposal would ensure adequate funds are available to the President to remove oil discharges, and prevent or mitigate substantial threats of discharge, to our nation's waters so as to protect public health, welfare and the environment by increasing the amount of the annual appropriation to the Emergency Fund from $50 million to $150 million.

The cost and pace of facility oil spill response has increased in recent years and the current annual $50 million appropriation for the Emergency Fund is no longer adequate to ensure funds will be available to the President to remove oil discharges. Facility oil spill response costs represent a significant portion of the funds expended from the emergency fund. The number of responses to facility spills, as well as the substantial cost involved in these spills, has increased since the passage of OPA. Until the mid-1990s there were generally less than 100 active facility spill response projects using the emergency fund at any one time, with annual costs of between $10 million and $20 million. In FY 2001, there are more than 600 open facility cases, at a cost of more than $75 million, for the first nine months of the fiscal year. These costs and cases have more than tripled since the mid-1990s.

For the past three years emergency fund expenditures have exceeded the $50 million annual appropriation, reaching a projected high of over $100 million this fiscal year. The fund has relied on carryover from prior year balances to augment the annual appropriation and meet the increased need. Assuming expenditures continue at the current pace, carryover at the end of FY2001 may well be at less than $5 million - leaving only $55 million for oil spill responses in FY2002. This provision would increase the amount of the annual appropriation from $50 million to $150 million, thus reducing

reliance on carryovers from prior year balances to augment the annual appropriation and meet the increased need.

SECTION 327. REMOVAL OF ABANDONED BARGES.

This section amends the Coast Guard's authority to remove an abandoned barge that has been moored, sunk, or left unattended, by authorizing the Coast Guard to remove such barge only when it is discharging or presents a substantial threat of discharging oil or a hazardous substance. To accomplish this, the proposal would amend section 4704 of title 46, United States Code, which is part of the Abandoned Barge Act (ABA), enacted as subtitle C of title V of the Oceans Act of 1992 (P.L. 102-587). This amendment to the ABA would set out criteria for removing an abandoned barge. The criteria for removal would be when: a) a barge is discharging oil or a hazardous substance or a substantial threat of such a discharge exists, and b) removal of the barge is determined necessary by the Federal On-Scene Coordinator (FOSC) to eliminate the discharge or substantial threat of discharge. It would also allow the Secretary to remove a barge without complying with the notice requirements if the Secretary determines that immediate removal is necessary. It also corrects a typographical error in the original statute.

The Coast Guard has identified over 1,000 abandoned barges that are eligible to be removed under the current ABA. For barges that do not pose a pollution threat, there is no funding available for their removal. These barges are typically eyesores to the community and have been abandoned for so long that their hulls have rotted, but they are no longer pollution threats. It is critical that the ABA specify removal only for abandoned barges discharging or posing pollution threats. The removal of eyesores is not an appropriate Federal function. The factors that properly trigger Federal interest are: (a) a barge obstructs or threatens to obstruct navigation (the Army Corps of Engineers can take action under the Rivers and Harbors Act of 1899), or (b) an abandoned barge discharges or threatens to discharge oil or a hazardous substance (the FOSC can take action under the Federal Water Pollution Control Act (FWPCA)).

The ABA's legislative history clearly reflects an intent to only authorize removal of abandoned barges containing oil or a hazardous substance. However, that limitation was not incorporated into the enacted statute. As a consequence of this omission, scarce operating funds are susceptible to diversion for "cosmetic" barge removals for which pollution trust funds cannot be used. In fiscal year 1998, Congress earmarked $1.5 million of Coast Guard operating funds for the removal of abandoned barges in Houston, Texas. None of these barges was an environmental threat or a navigation hazard. The average cost to remove each barge under this appropriations earmark was $300,000 -- funding that was needed for other critical Coast Guard program items.

Providing that the FOSC makes the determination whether removal of a barge is necessary is in keeping with the authority of the FOSC to determine the appropriate response to a discharge or a substantial threat of a discharge under the FWPCA.

In making the determination whether removal of an abandoned barge is necessary to eliminate the pollution threat, the FOSC considers the following factors:

1. The threat of pollution that would be caused by any residual oil or hazardous substance remaining on the abandoned barge if cleanup operations did not include removal of the abandoned barge.

2. The relative cost of cleanup operations that include removal of the abandoned barge, as compared with cleanup operations that do not include removal of the abandoned barge.

3. The substantial likelihood that the abandoned barge will be a site for future illegal dumping.

Federal costs for actions taken pursuant to this legislative proposal, relating to oil discharges, would be funded by the Oil Spill Liability Trust Fund (the "Fund"). With respect to hazardous substance responses, the source of funds would continue to be the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA; P.L. 96-510) Superfund. Section 111(a)(2) of CERCLA specifically refers to section 311(c) of the FWPCA as the basis for funding any response costs, which includes, when necessary, vessel removal costs.

Drawing on recent experience and based on an estimated average removal cost of $300,000 per barge, the potential savings to the Coast Guard operating expense appropriation accruing from this provision are substantial. Federal law requires the Coast Guard to respond in those instances where an abandoned barge is discharging or poses a substantial threat of discharging oil or a hazardous substance into the waters of the U.S. This proposed amendment narrows the scope of Coast Guard response authority under the ABA and aligns it with the authorities under the FWPCA and CERCLA.

SECTION 328. USE OF UNEXPENDED FUNDS FOR BRIDGE ALTERATIONS UNDER TRUMAN-HOBBS ACT.

The Truman-Hobbs Act, 33 U.S.C. 511-523, provides that no bridge shall at any time unreasonably obstruct the free navigation of any navigable waters of the United States. If the Commandant determines that alteration is necessary in order to render navigation through or under a bridge "free, easy, and unobstructed," then the Commandant issues an "Order to Alter."

Currently, there are 13 unreasonably obstructive bridges under a Truman-Hobbs Order to Alter. Of the 13, however, only 8 have been started. Two projects are in the initial phase of design; two are ready to go to construction; three are in the final phase of design; and one is in the final phase of construction. The Bridge Alteration program estimates that funds appropriated and earmarked for the seven projects are, in some cases, inadequate at

this time to complete the project. In other cases, the designated funds will exceed overall project needs.

In the interest of speeding up unfunded bridge alteration projects and eliminating dangerous obstructions to navigation sooner, this legislative proposal would amend the Truman-Hobbs Act to expressly provide that funds appropriated or otherwise available for a bridge alteration project that has been completed, may be used to pay the Federal Government's share of design and construction costs of other bridge alteration projects authorized under the Truman-Hobbs Act. By enacting this proposal, a larger number of bridge alteration projects will be able to be undertaken and the interests of navigation safety will be promoted.

SECTION 329. LAW ENFORCEMENT POWERS.

In the aftermath of September 11th 2001, the Coast Guard's port security activities have increased significantly. A number of statutes, such as the Ports and Waterways Safety Act and Espionage Act, give the President or the Secretary, and by subsequent delegation, the Coast Guard, broad authority to protect waterfront facilities and other shore installations. This authority includes establishment of safety and security zones and searches and seizures of property while enforcing those zones. However, there is no express authority for a Coast Guard member to effect an arrest of a person who commits a Federal offense on shore. Similarly, although authority for a Coast Guard member to carry a firearm in the performance of official duties is inherent within the Coast Guard's status as an armed force, there is no express authority to do so. Enacting this proposal will provide express authority to carry a firearm, to seize property, and to make an arrest under guidelines to be approved by the Secretary and the Attorney General,.

SECTION 330. NAVIGATION ASSISTANCE USER FEES

Section 333 of the President's FY03 budget requires the Secretary of Transportation to collect $165 million in FY03 and $330 million per year in subsequent years from commercial vessels as a navigation assistance user fee to offset the costs of the Coast Guard aids to navigation program. As proposed, each foreign and domestic commercial vessel of over 1600 gross tons would be required to pay $2,900 each time it enters a U.S. port. The fee would be the same regardless of the value of a vessel's cargo or its type of service. Sixteen hundred gross tons is a traditional breakpoint for vessel size. A vessel of over 1600 gross tons is usually considered a large vessel for purposes of inspection, manning, etc. According to Coast Guard estimates, there will be approximately 115,000 port arrivals by vessels of over 1600 gross tons during FY03, involving approximately 7,500 foreign vessels and 1,000 U.S. flag vessels. Publicly-owned vessels, fishing vessels, vessels that operate only in restricted waters, including the Great Lakes, and ferries would be exempt.

SECTION 331. CORRECTION TO DEFINITION OF FEDERAL LAW ENFORCEMTENT AGENCIES IN THE ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT OF 2002.

This proposal would correct an error and oversight in the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173. Section 2 of that Act defines agencies considered "Federal Law Enforcement Agencies" for the purposes of the Act. Included within the definitions is the "Coastal Security Service," however, no such agency exists in the United States Government. The same section of the Act fails to include the United States Coast Guard as a Federal law enforcement agency. As the President stated when he signed the bill into law on May 14, 2002: "Section 2(4)(G) of the Act defines as a Federal law enforcement agency the 'Coastal Security Service.' Because no such agency exists, and the principal agency with coastal security functions is the U.S. Coast Guard, the executive branch shall construe this provision as referring to the Coast Guard."

TITLE IV – RENEWAL OF ADVISORY GROUPS

SECTIONS 401 - 407. RENEWAL OF ADVISORY GROUPS.

Ten advisory committees currently provide expert advice and other valuable assistance to the Coast Guard concerning matters related to their specific function. All of these committees are governed by the Federal Advisory Committee Act ("FACA"), which regulates the formation and operation of advisory committees that provide advice or recommendations for the President or for one or more agencies or officer of the Federal Government [5 U.S.C. App. 2, §§ 1-15]. Advisory committees may be established by the President, by one or more Federal agencies, or by statute or reorganization plan. Of the ten Coast Guard advisory committees, three are authorized by Department of Transportation pursuant to the Advisory Committee Act. Seven are authorized by statute. The seven statutorily-established Coast Guard advisory groups are:

- Navigation Safety Advisory Council;
- Commercial Fishing Industry Vessel Advisory Committee;
- Towing Safety Advisory Committee;
- Houston-Galveston Navigation Safety Advisory Committee;
- Lower Mississippi River Waterway Advisory Committee;
- National Boating Safety Advisory Council; and
- Great Lakes Pilotage Advisory Committee.

This proposal would amend the statutes governing these advisory committees to extend their termination dates, revise the manner of appointment of their members; delete the requirement that the Secretary's designated representative shall act as executive secretary, and make various technical corrections to their authorizing statutes.

Section 304 of the Coast Guard Authorization Act of 1996 (Pub.L. 104-324) renewed the first six groups listed above until September 30, 2000. Section 303 of the Coast Guard

Authorization Act of 1998 (Pub.L. 105-383) established the seventh, the Great Lakes Pilotage Advisory Committee, with a termination date of September 30, 2003. Section 1118 of the Consolidated Appropriations Act, 2001, P. L. 106-554, included a provision that amended the appointment
process and qualifications for individuals serving on the Great Lakes Pilotage Advisory Committee and extended its termination date to September 30, 2005.
This proposal would clarify the membership provisions pertaining to the Great Lakes Pilotage Advisory Committee and would extend the termination dates for the other six of these statutorily-established advisory groups to September 20, 2005.

However, this proposal would amend the statutes governing these committees to transfer from the Secretary of Transportation to the Commandant of the Coast Guard the authority to appoint the members of these committees. It would not change the statutory membership requirements in any way.

Because these committees are highly technical groups requiring that members have knowledge, skills, and experience in specialized areas of the marine industry, evaluation of the technical qualifications and competency of candidates could be performed more easily by the Coast Guard. Vesting the appointment authority with the Commandant will facilitate timely appointments to fill vacancies.

Finally, this proposal would make minor technical amendments to the statutes governing these seven advisory committees, such as correcting citations and coordinating their termination dates by extending them uniformly, to September 30, 2005. It would also change the name of the Commercial Fishing Industry Vessel Advisory Committee to the Commercial Fishing Industry Vessel Safety Advisory Committee.